

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CLAIMANT**

**APPEAL 21A-UI-20742-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EMPLOYER**

**OC: 07/25/21  
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer/appellant, filed an appeal from the September 3, 2021, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on November 9, 2021. The employer participated and testified. The claimant participated and testified. The administrative law judge took official notice of the administrative record. Employer's Exhibit 1 was admitted as evidence.

**ISSUE:**

Did the claimant voluntarily quit without good cause attributable to the employer, or was the claimant discharged for disqualifying job-related misconduct?  
Was the claimant overpaid benefits?  
If so, should the claimant repay the benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer on December 14, 2020. He worked as a full-time truck driver. His employment ended on July 7, 2021.

The employer's policy provides that the employer may drug test an employee pre-employment, based on suspicion, or randomly. The policy does not list the drugs that could be tested. The policy provides that any amount of drugs will result in discipline.

The claimant was selected for a random drug tested by the U.S. Department of Transportation (DOT). He was tested on Tuesday, June 29, 2021 by the employer's third party drug testing facility. The test was a urine test. On Wednesday, July 7, the claimant told the employer that he needed about a week off because he was stressed out. Sometime after the claimant was tested, the employer noticed that his truck was cleared of all of his personal belongings

On July 8, the employer received the test result showing the claimant tested positive for amphetamines. The test result does not show the amount of drugs in the claimant's system. The employer called the claimant and told him that the employer had received his positive test result. The employer told the claimant that to keep his commercial driver's license (CDL) and continue working for the employer he would need to attend rehab and counseling. The employer told the claimant that if he did not participate in rehab and counseling he would be fired. The employer's third party drug testing facility also called the claimant and told him about his test result and sent him the results in the mail. The employer did not recall if the claimant was informed of his right to a re-test. The employer did not recall if the testing facility had taken a split sample. The claimant could not afford to pay for rehab or counseling so he stopped attending work.

The claimant received \$3,186.00 in REGULAR unemployment insurance (UI) benefits between September 19, 2021 and October 30, 2021. The employer participated in the fact-finding interview.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

In this case, the claimant stopped attending work after July 7 because he could not afford to pay for rehab. Although the employer told the claimant that his employment may be terminated in the future if he did not participate in rehab and counseling, the employer did not actually terminate the claimant's employment. The claimant quit when he stopped attending work. Benefits are denied.

The administrative law judge further concludes the claimant has been overpaid REGULAR UI benefits in the amount of \$3,186.00.

Iowa Code §96.3(7) provides, in pertinent part:

*7. Recovery of overpayment of benefits.*

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if un rebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions

without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The claimant has been overpaid REGULAR UI benefits in the amount of \$3,186.00 between September 19, 2021 and October 30, 2021 as he is not qualified and/or is ineligible to receive REGULAR UI benefits during this time period. Since the employer participated in the fact-finding interview, the claimant is required to repay these benefits.

**DECISION:**

The September 3, 2021, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

The claimant has been overpaid REGULAR UI benefits in the amount of \$3,186.00, which must be repaid.



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December 15, 2021  
Order Dated and Mailed

dz/mh